

declared disaster as described in the natural disaster declaration;

(3) Provide adequate proof, to the satisfaction of the FSA county committee, of the average number of cows in the dairy herd and annual milk production commercially marketed by all persons in the eligible dairy operation during the years of the base period (2003 and 2004 calendar years) and applicable disaster year that corresponds with the issuance date of the applicable natural disaster declaration, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and satisfy the terms and conditions of this part, instructions issued by FSA, and instructions contained in the application to be eligible for benefits under this part.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the calendar year applicable to the natural disaster declaration and loss claim period, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible disaster years.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base annual production, as defined in § 786.102, that corresponds to the natural disaster declaration and must have occurred during that same period as follows:

(1) For disaster declarations for disasters during a calendar year (2005, 2006, or 2007), the disaster claim period is the full calendar year and

(2) For disaster declarations issued during one calendar year that ends in another calendar year, the producer will be eligible for both disaster years.

(h) Deductions in eligibility will be made for any disaster payments previously received for the loss including any made under a previous dairy disaster assistance payment program for 2005.

§ 786.105 Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production losses can be computed in accordance with § 786.106.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dairy herd inventory records available for the operation, for the years of the base period (2003 and 2004 calendar years) and disaster claim period that corresponds with the issuance date of the applicable natural disaster declaration.

(1) A producer must certify and provide such proof as requested that losses were related to the disaster declaration issued and occurred in an eligible county during the eligible claim period.

(2) A producer must certify to the average number of cows in the dairy herd during the base period and applicable disaster claim period when there is insufficient documentation available for verification.

(3) Additional supporting documentation may be requested by FSA as necessary to verify production losses to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based

on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production losses, or any other documents available to confirm or adjust the production history losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA.

(d) As specified in § 786.106, loss calculations will be based on comparing the expected base annual production consistent with this part and the actual production during the applicable disaster claim year. Such calculations are subject to adjustments as may be appropriate such as a correction for losses not due to the disaster. If adequate proof of normally marketed production and any other production for relevant periods is not presented to the satisfaction of FSA, the request for benefits will be rejected. Special adjustments for new producers may be made as determined necessary by the Administrator.

§ 786.106 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable disaster claim period, as provided by § 786.104(g), that corresponds with the applicable natural disaster declaration. Specifically, dairy production losses incurred by producers under this part are determined on the established history of the dairy operation's average number of cows in the dairy herd and actual commercial production marketed during the base period and applicable disaster claim period that corresponds with the applicable natural disaster declaration, as provided by the dairy operation consistent with § 786.105. Except as otherwise provided in this part, the base annual production, as defined in § 786.102 and established in § 786.104(g) is determined for each applicable disaster year based on the average annual production per cow determined according to the following:

(1) The average of annual marketed production during the base period calendar years of 2003 and 2004, divided by;

(2) The average number of cows in the dairy operation's herd during the base period calendar years of 2003 and 2004.

(b) If relevant information to calculate the average annual production per cow for one or both of the base period calendar years of 2003 and 2004, is not available, an alternative method of determining the average annual production per cow may be established by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, information from three similar farms may be obtained by FSA to estimate base annual production.

(c) The average annual production per cow, as determined according to paragraphs (a)(1) and (a)(2) of this section, is multiplied by the average number of cows in the dairy operation's herd during the applicable disaster year (excluding cow losses resulting from the disaster occurrence), to determine base annual production for the dairy operation for each applicable disaster claim period year.

(d) The eligible dairy production losses for a dairy operation for each of the authorized disaster claim period years will be:

(1) The relevant period's base annual production for the dairy operation calculated under paragraph (c) of this section less,

(2) For each such disaster claim period for each dairy operation the actual commercially-marketed production relevant to that period.

(e) Spoiled or dumped milk, disposed of for reasons unrelated to the disaster occurrence, must be counted as production for the relevant disaster claim period. Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the disaster identified in the natural disaster declaration or is determined by FSA not to be related to the natural disaster identified in the natural disaster declaration. FSA county committees will determine production losses that are not caused by the disaster associated with the natural disaster declaration.